

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Atty. Docket: GB 020255

DAVID A. EVES ET AL.

Group Art Unit: 2626

Serial No.: 10/540,315

Examiner: PARAS D. SHAH

Filed: JUNE 21, 2005

CONF. NO.: 1627

TITLE: AUGMENTING AN AUDIO SIGNAL VIA EXTRACTION OF MUSICAL  
FEATURES AND OBTAINING OF MEDIA FRAGMENTS

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellants herewith respectfully present its Brief on Appeal  
as follows:

REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

RELATED APPEALS AND INTERFERENCES

To the best of Appellants' knowledge and belief, there are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-22 are pending in this application. This rejection was upheld, in an Advisory Action that mailed on October 8, 2008 in response to an Amendment After Final Action that was submitted on September 24, 2008. Claims 1-22 are the subject of this appeal.

STATUS OF AMENDMENTS

An Amendment After Final Action was submitted on September 24, 2008 in response to a Final Office Action mailed on July 25, 2008. The Amendment After Final Action did not include any amendments. In an Advisory Action mailed on October 8, 2008, it is indicated that the after Amendment After Final Action will be entered but the Amendment After Final action does not place the application in condition for allowance. Specifically, the Advisory Action withdrew a rejection of claim 21 under 35 U.S.C. §112, first paragraph but maintained the rejection of claims 1-22 over the prior art of record. This Appeal Brief is in response to the Final Office Action mailed on September 24, 2008, that finally rejected claims 1-22, which remain finally rejected over the prior art of record in the Advisory Action mailed on October 8, 2008.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, for example as claimed in claim 1, relates to a method for augmenting an audio signal (e.g., see, present patent application, page 5, lines 8-9) including receiving an audio signal (e.g., see, present patent application, page 6, lines 5-6 and lines 8-11), extracting features from said audio signal (e.g., see, present patent application, page 5, lines 27 though page 6, line 4 and page 6, lines 5-6), generating a time ordered table of dramatic parameters according to the extracted features (e.g., see, present patent application, FIG. 3 and accompanying description contained on page 8, lines 5-17), obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act (e.g., see, present patent application, page 10, lines 12-16 and page 11, lines 10-15), and outputting said media fragments (e.g., see, present patent application, page 10, lines 29-30).

The present invention, for example as claimed in claim 17, relates to a system for augmenting an audio signal (e.g., see, present patent application, FIG. 1 and page 5, lines 8-9). The system includes an input device for receiving an audio signal (e.g., see, present patent application, input device 122 and page 6, lines 5-6 and lines 8-11) and processing means for extracting features from said received audio signal (e.g., see, present patent application, CPU 12, page 5, lines 27 through page 6, line 4 and page 6, lines 5-6), for generating a time ordered table of dramatic parameters associated with said extracted features (e.g., see, present patent application, FIG. 3 and accompanying description contained on page 8, lines 5-17), for obtaining media fragments at least in part in dependence on said generated table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act (e.g., see, present patent application, page 10, lines 12-16 and page 11, lines 10-15), and at least one output device for outputting said media fragments (e.g., see, present patent application, output devices 116, 118 and page 10, lines 29-30).

The present invention, for example as claimed in claim 21, relates to program code stored on a computer readable medium which when executed by a processor causes said processor to a method (e.g., see, present patent application, FIG. 1, carrier 112 and page 5, lines 8-18) including receiving an audio signal (e.g., see, present patent application, page 6, lines 5-6 and lines 8-11), extracting features from said audio signal (e.g., see, present patent application, page 5, lines 27 though page 6, line 4 and page 6, lines 5-6), generating a time ordered table of dramatic parameters according to the extracted features (e.g., see, present patent application, FIG. 3 and accompanying description contained on page 8, lines 5-17), obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act (e.g., see, present patent application, page 10, lines 12-16 and page 11, lines 10-15), and outputting said media fragments (e.g., see, present patent application, page 10, lines 29-30).

It should be explicitly noted that it is not the Appellants' intention that the currently claimed method, system and program



code be limited to operation within the illustrative method, system and program code described above beyond what is required by the claim language. Further description of the illustrative method, system and program code is provided above indicating portions of the claims which cover the illustrative method, system and program code merely for compliance with requirements of this appeal without intending any further interpreted limitations be read into the claims as presented.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 5, 7, 9-10, and 16-22 of U.S. Patent Application Serial No. 10/540,315 are obvious under 35 U.S.C. §103(a) over over European Patent Publication WO 01/11495 to Finn ("Finn") in view of U.S. Patent No. 6,355,869 to Mitton ("Mitton").

Whether claim 4 of U.S. Patent Application Serial No. 10/540,315 is obvious under 35 U.S.C. §103(a) over Finn in view of Mitton in further view of U.S. Patent Publication No. 2003/0045954 to Weare ("Weare").

Whether claim 8 of U.S. Patent Application Serial No. 10/540,315 is obvious under 35 U.S.C. §103(a) over Finn in view of Mitton in further view of U.S. Patent Publication No. 2002/0106127 to Kodama ("Kodama").

Whether claims 6 and 11-14 of U.S. Patent Application Serial No. 10/540,315 are obvious under 35 U.S.C. §103(a) over Finn in view of Mitton in further view of U.S. Patent No. 6,954,894 to Balnaves ("Balnaves").

Whether claim 15 of U.S. Patent Application Serial No. 10/540,315 are obvious under 35 U.S.C. §103(a) over Finn in view of

Mitton in further view of U.S. Patent No. 6,308,154 to Williams  
("Williams").

ARGUMENT

Claims 1-3, 5, 7, 9-10, and 16-22 are said to be obvious over Finn in view of Mitton.

Appellants respectfully request the Board to address the patentability of independent claims 1, 17 and 21, and further claims 2-3, 5, 7, 9-10, and 16, 18-20 and 22 as respectively depending from one of independent claims 1 and 17, based on the requirements of independent claims 1, 17 and 21. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellants herein specifically reserve the right to argue and address the patentability of claims 2-3, 5, 7, 9-10, and 16, 18-20 and 22 at a later date should the separately patentable subject matter of claims 2-3, 5, 7, 9-10, and 16, 18-20 and 22 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of independent claims 1, 17 and 21 is not intended as a waiver of

Appellants' right to argue the patentability of the further claims and claim elements at that later time.

Finn, as appropriately titled, is related to "Music Database Searching". As stated in Finn, the Finn (emphasis added) "invention relates to search engines and databases, and in particular to search engines adapted to search for particular musical sequences or phrases in a database of recorded or encoded sound files in a computer system." (See, Finn, page 1, lines 3-5.) Finn further goes on to say that (emphasis added) "it is desirable to be able to search a music database for a specific piece of music." (See, Finn, page 1, lines 13-14.) FIG. 1 shows Finns system including a database 9 wherein (emphasis added) "the search criteria are compared with relevant features in each music file in a database 9 or 10." (See, Finn, page 11, lines 8-10.)

While Finn, page 3, lines 5-7 is cited in support of the notion that Finn shows "obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining

act" as for example recited in claim 1, it respectfully submitted that reliance on Finn is misplaced.

In fact, page 3, lines 5-7 of Finn states (emphasis added):

It is a further object of the present invention to provide a method and apparatus for applying musical search criteria to a database to obtain a match against target music files in a computer storage medium.

It is not understood how the "target music files" of Finn are considered to not be an audio media fragment as specifically excluded from the claims as presented.

The Advisory Action attempts to address the deficiencies of Finn pointing to the abstract and page 3, lines 5-7. It must be pointed out that the abstract of Finn is specifically directed to music files. Page 3, lines 5-7 as discussed above similarly states an object of Finn as being (emphasis added) "a method and apparatus for applying musical search criteria to a database to obtain a match against target music files in a computer storage medium."

Apparently the Advisory Action realized the deficiency in Finn which clearly is directed to searching for music files. In the Advisory Action it is stated that (emphasis added) "the limitation of 'the media fragments are not audio media fragments' was

interpreted to mean that the media fragments that are obtained are not the fragments obtained from the audio signal as described previously in the claim. Thus, the media fragments are not excluded from consisting of an audio segment that is different from the input of the search as taught by Finn ..."

It is respectfully submitted that this interpretation of the claims is not supportable by the plain language of the claims. The claims simply recite that (emphasis added) "the media fragments are not audio media fragments ..." It is respectfully submitted that the plain meaning of the claims may not be simply ignored or construed to mean other than what is plainly recited.

The MPEP has paid particular attention to the so-called Plain Meaning doctrine.

The plain meaning doctrine is explained in the MPEP 2111.01 entitled "Plain Meaning" wherein it is stated that (emphasis added):

I. <THE WORDS OF A CLAIM MUST BE GIVEN THEIR "PLAIN MEANING" UNLESS THEY ARE DEFINED IN THE SPECIFICATION

While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. >In re American

Academy of Science Tech Center, \_\_\_ F.3d \_\_\_, 2004 WL 1067528 (Fed. Cir. May 13, 2004) (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.) < This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below)\*\*>; Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004)

It is respectfully submitted that no such opposing definition is provided in the specification of the present patent application nor is one alleged in support of the position provided in the Advisory Action.

The MPEP in the §2106 entitled "Patentable Subject Matter - Computer-Related Inventions" in section II C. makes clear that (emphasis provided):

Office personnel must rely on the applicant's disclosure to properly determine the meaning of \*\* the claims. Markman v. Westview Instruments, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (en banc), aff 'd, U.S. , 116 S. Ct. 1384 (1996) ... ("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.")



It is therefore respectfully submitted that the Examiner is not enabled to interpret a claim in a vacuum and attribute some unsupported and contrived meaning to the plain language of the claims. The claims recite simply that the media fragments are not audio media fragments and this language can not simply be ignored.

Based on the foregoing, it is respectfully submitted that the method of claim 1 is not anticipated or made obvious by the teachings of Finn in view of Mitton. For example, Finn in view of Mitton does not disclose or suggest, a method that amongst other patentable elements, comprises (illustrative emphasis added) "receiving an audio signal, extracting features from said audio signal, generating a time ordered table of dramatic parameters according to the extracted features, obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act, and outputting said media fragments" as recited in claim 1, and as similarly recited in claims 17 and 21.

It must be noted that Mitton similar to Finn, relates to audio music files and shows creating an editable music file from a music

recording. As such, Mitton does nothing to provide that which is missing from Finn.

Based on the foregoing, the Appellants respectfully submit that independent claims 1, 17 and 21 are patentable over Finn in view of Mitton and notice to this effect is earnestly solicited.

Claims 2-3, 5, 7, 9-10, and 16, 18-20 and 22 respectively depend from one of claims 1 and 17 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of said claims. Accordingly, separate consideration and allowance of each of the dependent claims is respectfully requested.

Claim 4 is said to be unpatentable over Finn in view of Mitton in further view of Weare.

Weare is cited for allegedly showing elements of the dependent claim yet does not cure the deficiencies in each of Finn and Mitton. Accordingly, it is respectfully submitted that claim 4 is allowable at least based on its dependence from independent claim 1.

Claim 8 is said to be unpatentable over Finn in view of Mitton  
in further view of Kodama.

Kodama is cited for allegedly showing elements of the dependent claim yet does not cure the deficiencies in each of Finn and Mitton. Accordingly, it is respectfully submitted that claim 8 is allowable at least based on its dependence from independent claim 1.

Claims 6 and 11-14 are said to be unpatentable over Finn in  
view of Mitton in further view of Shi in still further view of  
Balnaves.

Balnaves is cited for allegedly showing elements of the dependent claims yet does not cure the deficiencies in each of Finn and Mitton. Accordingly, it is respectfully submitted that claims 6 and 11-14 are allowable at least based on dependence from independent claim 1.

Claim 15 is said to be unpatentable over Finn in view of  
Mitton in further view of Williams.

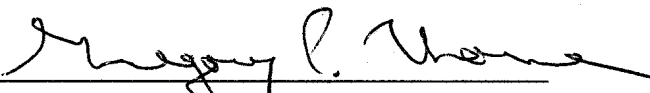
Williams is cited for allegedly showing elements of the dependent claim yet does not cure the deficiencies in each of Finn and Mitton. Accordingly, it is respectfully submitted that claim 15 is allowable at least based on its dependence from independent claim 1.

In addition, Appellants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Appellants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

CONCLUSION

Claims 1-22 are patentable over any of Finn in view of Mitton alone and in any combination of Weare, Kodama, Balnaves and Williams. Thus the Examiner's rejection of claims 1-22 should be reversed.

Respectfully submitted,

By   
Gregory L. Thorne, Reg. 39,398  
Attorney for Appellants  
December 15, 2008

**THORNE & HALAJIAN, LLP**  
Applied Technology Center  
111 West Main Street  
Bay Shore, NY 11706  
Tel: (631) 665-5139  
Fax: (631) 665-5101

## APPENDIX A

### CLAIMS ON APPEAL

1. (Previously presented) A method for augmenting an audio signal comprising acts of:

receiving an audio signal  
extracting features from said audio signal,  
generating a time ordered table of dramatic parameters  
according to the extracted features,

obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act, and

outputting said media fragments.

2. (Previously presented) The method according to claim 1, wherein said features extracted from said audio signal include one or more of tempo, key, volume.

3. (Previously presented) The method according to claim 1, wherein the generation of said table of dramatic parameters comprises retrieving a list of dramatic parameters and associated

audio features, comparing and matching the extracted features with the retrieved associated audio features, and inserting an entry comprising the dramatic parameter associated with the audio feature.

4. (Previously presented) The method according to claim 1, wherein said dramatic parameters include mood, changes of pace, incidents.

5. (Previously presented) The method according to claim 1, wherein said obtaining said media fragments comprises selecting a fragment from a store, said fragment being stored with an associated dramatic parameter which matches the respective entry in the table of dramatic parameters.

6. (Previously presented) The method according to claim 1, wherein said obtaining said media fragments comprises generating a fragment.

7. (Previously presented) The method according to claim 5, and further comprising receiving user input, said user input affecting said obtaining.

8. (Previously presented) The method according to claim 1, wherein said media fragments include video data.

9. (Previously presented) The method according to claim 1, wherein said outputting comprises storing said media fragments and said audio signal.

10. (Previously presented) The method according to claim 1, wherein said outputting comprises rendering said media fragments and said audio signal.

11. (Previously presented) The method according to claim 1, and further comprising, prior to obtaining said media fragments, selecting a story template at least in part in dependence on said table of dramatic parameters, said story template affecting said obtaining of media fragments.



12. (Previously presented) The method according to claim 11, wherein said story template comprises dramatic parameter data related to a narrative story structure.

13. (Previously presented) The method according to claim 12, wherein the selection of media fragments comprises matching the dramatic parameters of the selected story template with those of the media fragments.

14. (Previously presented) The method according to claim 11, wherein the story template for selection is generated according to logical story structure rules and the dramatic parameter list.

15. (Previously presented) The method according to claim 1, wherein the dramatic parameters are represented by physical mark up language tags.

16. (Previously presented) The method according to claim 1, wherein combinations of extracted features have associated dramatic parameters.

17. (Previously presented) A system for augmenting an audio signal, comprising an input device for receiving an audio signal and processing means for extracting features from said received audio signal, for generating a time ordered table of dramatic parameters associated with said extracted features, for obtaining media fragments at least in part in dependence on said generated table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act, and at least one output device for outputting said media fragments.

18. (Previously presented) The system according to claim 17, further comprising storage for storing said media fragments.

19. (Previously presented) The system according to claim 17, wherein said at least one output device comprises display means on which said media fragments are displayed.

20. (Previously presented) The system according to claim 17, wherein said at least one output device is responsive to instructions associated with said dramatic parameters.

21. (Previously presented) Program code stored on a computer readable medium which when executed by a processor causes said processor to perform the acts of:

receiving an audio signal  
extracting features from said audio signal,  
generating a time ordered table of dramatic parameters  
according to the extracted features,

obtaining media fragments at least in part in dependence on the table of dramatic parameters, wherein the media fragments are not audio media fragments and wherein the media fragments are unrelated to the audio signal prior to the obtaining act, and

outputting said media fragments.

22. (Previously presented) The system of claim 17, comprising a database storing media fragments with associated dramatic parameters.

**APPENDIX B**

**Evidence on Appeal**

None

**APPENDIX C**

**Related Proceedings of Appeal**

None